IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.192 OF 1999

Nanu @ Nana Kavaji Paseria & others Appellants
versus
The Administration of Union Territory of
Dadra and Nagar Haveli, Silvassa and another Respondents

None appears for the Appellant.
Mrs.P.H.Kantharia for Union Territory of Dadra & Nagar Haveli.
Mrs.M.M.Deshmukh, APP, for State.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.
DATE : 22 June 2016

PC :

1. This appeal is placed at the request made by the jail authorities for getting opinion in accordance with the provisions of Section 432 of the Code of Criminal Procedure, 1973 (`Code').

2. The provisions of Section 432 of the Code reads as under :

> "*S.432 - Power to suspend or remit sentences.-*
>
> *(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.*

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with :

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and,-

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government" means,-

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed."

3. It would be appropriate that the opinion is obtained from the concerned Trial Court which passed the order of conviction and sentence. The Registrar, Judicial-I, is directed to forward a communication in this regard to the concerned Court at the earliest. An intimation thereof be given to the jail authorities.

(PRAKASH D. NAIK, J.) (NARESH H. PATIL, J.)

MST